

Senate Bill No. 107

CHAPTER 4

An act to repeal and add Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code, relating to natural community conservation planning, and making an appropriation therefor.

[Approved by Governor February 2, 2002. Filed with
Secretary of State February 4, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 107, Sher. Natural community conservation planning.

(1) The existing Natural Community Conservation Planning Act authorizes the Department of Fish and Game to enter into an agreement with any person for the purpose of preparing and implementing a natural community conservation plan to provide comprehensive management and conservation of multiple wildlife species.

This bill would repeal that act and would enact a new Natural Community Conservation Planning Act. The bill would authorize the department to enter into agreements, which would be required to meet specified conditions, with any person or public entity for the purpose of preparing a natural community conservation plan to provide comprehensive management and conservation of multiple wildlife species. The bill would require the agreement to meet specified conditions.

The bill would require the department to establish a process for public participation throughout plan development and review to ensure that interested persons have an adequate opportunity to provide input in the process.

The bill would require each natural community conservation plan to include an implementation agreement governing specified matters.

The bill would authorize the department to be compensated for the actual costs incurred in participating in the preparation and implementation of natural community conservation plans.

(2) Existing law continuously appropriates the money in the Fish and Game Preservation Fund to the department and the Fish and Game Commission to carry out the Fish and Game Code.

Because this bill would impose duties on the department, the bill would make an appropriation.

Appropriation: yes.



The people of the State of California do enact as follows:

SECTION 1. Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code is repealed.

SEC. 2. Chapter 10 (commencing with Section 2800) is added to Division 3 of the Fish and Game Code, to read:

CHAPTER 10. NATURAL COMMUNITY CONSERVATION PLANNING ACT

2800. This chapter shall be known, and may be cited, as the Natural Community Conservation Planning Act.

2801. The Legislature finds and declares all of the following:

(a) The continuing population growth in California will result in increasing demands for dwindling natural resources and result in the continuing decline of the state's wildlife.

(b) There is a need for broad-based planning to provide for effective protection and conservation of the state's wildlife heritage while continuing to allow appropriate development and growth.

(c) Natural community conservation planning is an effective tool in protecting California's natural diversity while reducing conflicts between protection of the state's wildlife heritage and reasonable use of natural resources for economic development.

(d) Natural community conservation planning promotes coordination and cooperation among public agencies, landowners, and other private interests, provides a mechanism by which landowners and development proponents can effectively address cumulative impact concerns, promotes conservation of unfragmented habitat areas, promotes multispecies and multihabitat management and conservation, provides one option for identifying and ensuring appropriate mitigation that is roughly proportional to impacts on fish and wildlife, and promotes the conservation of broad-based natural communities and species diversity.

(e) Natural community conservation planning can provide for efficient use and protection of natural and economic resources while promoting greater sensitivity to important elements of the state's critical natural diversity.

(f) Natural community conservation planning is a voluntary and effective planning process that can facilitate early coordination to protect the interests of the state, the federal government, and local public agencies, landowners, and other private parties.

(g) Natural community conservation planning is a mechanism that can provide an early planning framework for proposed development



projects within the planning area in order to avoid, minimize, and compensate for project impacts to wildlife.

(h) Natural community conservation planning is consistent with, and will support, the fish and wildlife management activities of the department in its role as the trustee for fish and wildlife within the state.

(i) The purpose of natural community conservation planning is to sustain and restore those species and their habitat identified by the department that are necessary to maintain the continued viability of those biological communities impacted by human changes to the landscape.

(j) Natural community conservation planning is a cooperative process that often involves local, state, and federal agencies and the public, including landowners within the plan area. The process should encourage the active participation and support of landowners and others in the conservation and stewardship of natural resources in the plan area during plan development using appropriate measures, including incentives.

2802. The Legislature further finds and declares that it is the policy of the state to conserve, protect, restore, and enhance natural communities. It is the intent of the Legislature to acquire a fee or less than fee interest in lands consistent with approved natural community conservation plans and to provide assistance with the implementation of those plans.

2805. The definitions in this section govern the construction of this chapter:

(a) “Adaptive management” means to use the results of new information gathered through the monitoring program of the plan and from other sources to adjust management strategies and practices to assist in providing for the conservation of covered species.

(b) “Changed circumstances” are reasonably foreseeable circumstances that could affect a covered species or geographic area covered by the plan.

(c) “Conserve,” “conserving,” and “conservation” mean to use, and the use of, methods and procedures within the plan area that are necessary to bring any covered species to the point at which the measures provided pursuant to Chapter 1.5 (commencing with Section 2050) are not necessary, and for covered species that are not listed pursuant to Chapter 1.5 (commencing with Section 2050), to maintain or enhance the condition of a species so that listing pursuant to Chapter 1.5 (commencing with Section 2050) will not become necessary.

(d) “Covered species” means those species, both listed pursuant to Chapter 1.5 (commencing with Section 2050) and nonlisted, conserved



and managed under an approved natural community conservation plan and that may be authorized for take.

(e) “Department assurance” means the department’s commitment pursuant to subdivision (f) of Section 2820.

(f) “Monitoring program” means a program within an approved natural community conservation plan that provides periodic evaluations of monitoring results to assess the adequacy of the mitigation and conservation strategies or activities and to provide information to direct the adaptive management program. The monitoring program shall, to the extent practicable, also be used to meet the monitoring requirements of Section 21081.6 of the Public Resources Code. A monitoring program includes all of the following:

(1) Surveys to determine the status of biological resources addressed by the plan, including covered species.

(2) Periodic accountings and assessment of authorized take.

(3) Progress reports on all of the following matters:

(A) Establishment of habitat reserves or other measures that provide equivalent conservation of covered species and providing funding where applicable.

(B) Compliance with the plan and the implementation agreement by the wildlife agencies, local governments, and landowners who have responsibilities under the plan.

(C) Measurements to determine if mitigation and conservation measures are being implemented roughly proportional in time and extent to the impact on habitat or covered species authorized under the plan.

(D) Evaluation of the effectiveness of the plan in meeting the conservation objectives of the plan.

(E) Maps of land use changes in the plan area that may affect habitat values or covered species.

(4) A schedule for conducting monitoring activities.

(g) “Natural community conservation plan” or “plan” means the plan prepared pursuant to a planning agreement entered into in accordance with subdivision (a) of Section 2810. The plan shall identify and provide for those measures necessary to conserve and manage natural biological diversity within the plan area while allowing compatible and appropriate economic development, growth, and other human uses.

(h) “Person” has the same meaning as defined in Section 711.2.

(i) “Plan participant,” prior to approval of a natural community conservation plan and execution of an implementation agreement, means a signatory to the planning agreement. Upon approval of a natural community conservation plan and execution of an implementation



agreement, plan participants and any local agency that is a signatory to the implementing agreement are the permittees.

(j) “Unforeseen circumstances” means changes affecting one or more species, habitat, natural community, or the geographic area covered by a conservation plan that could not reasonably have been anticipated at the time of plan development, and that result in a substantial adverse change in the status of one or more covered species.

(k) “Wildlife” has the same meaning as defined in Section 711.2.

(l) “Wildlife agencies” means the department and one or both of the following:

(1) United States Fish and Wildlife Service.

(2) National Marine Fisheries Service.

2809. Any person, or any local, state, or federal agency, independently, or in cooperation with other persons, may undertake natural community conservation planning.

2810. (a) The department may enter into an agreement with any person or public entity for the purpose of preparing a natural community conservation plan, in cooperation with a local agency that has land use permit authority over the activities proposed to be addressed in the plan, to provide comprehensive management and conservation of multiple wildlife species, including, but not limited to, those species listed pursuant to Article 2 (commencing with Section 2070) of Chapter 1.5. The agreement shall include a provision specifying the amount of compensation, if any, payable to the department pursuant to Section 2829.

(b) The agreement shall meet all of the following conditions:

(1) The agreement shall be binding upon the department, other participating federal, state, and local agencies, and participating private landowners.

(2) The agreement shall define the geographic scope of the conservation planning area.

(3) The agreement shall identify a preliminary list of those natural communities, and the endangered, threatened, candidate, or other species known, or reasonably expected to be found, in those communities, that are intended to be the initial focus of the plan.

(4) The agreement shall identify preliminary conservation objectives for the planning area.

(5) The agreement shall establish a process for the inclusion of independent scientific input to assist the department and plan participants, and to do all of the following:

(A) Recommend scientifically sound conservation strategies for species and natural communities proposed to be covered by the plan.



(B) Recommend a set of reserve design principles that addresses the needs of species, landscapes, ecosystems, and ecological processes in the planning area proposed to be addressed by the plan.

(C) Recommend management principles and conservation goals that can be used in developing a framework for the monitoring and adaptive management component of the plan.

(D) Identify data gaps and uncertainties so that risk factors can be evaluated.

(6) The agreement shall require coordination with federal wildlife agencies with respect to the federal Endangered Species Act (16 U.S.C. Sec. 1531 et seq.).

(7) The agreement shall encourage concurrent planning for wetlands and waters of the United States.

(8) The agreement shall establish an interim process during plan development for project review wherein discretionary projects within the plan area subject to Division 13 (commencing with Section 21000) of the Public Resources Code that potentially conflict with the preliminary conservation objectives in the planning agreement are reviewed by the department prior to, or as soon as possible after the project application is deemed complete pursuant to Section 65943 of the Government Code and the department recommends mitigation measures or project alternatives that would help achieve the preliminary conservation objectives. As part of this process, information developed pursuant to paragraph (5) of subdivision (b) of Section 2810 shall be taken into consideration by the department and plan participants. Any take of candidate, threatened, or endangered species that occurs during this interim period shall be included in the analysis of take to be authorized under an approved plan. Nothing in this paragraph is intended to authorize take of candidate, protected, or endangered species.

(9) The agreement shall establish a process for public participation throughout the plan development and review pursuant to Section 2815.

(c) The approval of the planning agreement is not a project pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.

(d) Prior to department approval of the planning agreement, the public shall have 21 calendar days to review and comment on the proposed planning agreement.

2815. The department shall establish, in cooperation with the parties to the planning agreement, a process for public participation throughout plan development and review to ensure that interested persons, including landowners, have an adequate opportunity to provide input to lead agencies, state and federal wildlife agencies, and others involved in preparing the plan. The public participation objectives of this section



may be achieved through public working groups or advisory committees, established early in the process. This process shall include all of the following:

(a) A requirement that draft documents associated with a natural community conservation plan that are being considered for adoption by the plan lead agency shall be available for public review and comment for at least 60 days prior to the adoption of that draft document. Preliminary public review documents shall be made available by the plan lead agency at least 10 working days prior to any public hearing addressing these documents. The review period specified in this subdivision may run concurrently with the review period provided for any document required by the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) that is associated with the natural community conservation plan. This subdivision shall not be construed to limit the discretion of a public agency to revise any draft documents at a public hearing.

(b) A requirement to make available in a reasonable and timely manner all draft plans, memoranda of understanding, maps, conservation guidelines, species coverage lists, and other planning documents associated with a natural community conservation plan that are subject to public review.

(c) A requirement that all public hearings held during plan preparation or review for approval are complementary to, or integrated with, those hearings otherwise provided by law.

(d) An outreach program to provide access to information for persons interested in the plan, including landowners, with an emphasis on obtaining input from a balanced variety of affected public and private interests, including state and local governments, county agricultural commissioners, agricultural organizations, landowners, conservation organizations, and the general public.

2820. (a) The department shall approve a natural community conservation plan for implementation after making the following findings, based upon substantial evidence in the record:

(1) The plan has been developed consistent with the process identified in the planning agreement entered into pursuant to Section 2810.

(2) The plan integrates adaptive management strategies that are periodically evaluated and modified based on the information from the monitoring program and other sources, which will assist in providing for the conservation of covered species and ecosystems within the plan area.

(3) The plan provides for the protection of habitat, natural communities, and species diversity on a landscape or ecosystem level through the creation and long-term management of habitat reserves or

other measures that provide equivalent conservation of covered species appropriate for land, aquatic, and marine habitats within the plan area.

(4) The development of reserve systems and conservation measures in the plan area provides, as needed for the conservation of species, all of the following:

(A) Conserving, restoring, and managing representative natural and seminatural landscapes to maintain the ecological integrity of large habitat blocks, ecosystem function, and biological diversity.

(B) Establishing one or more reserves or other measures that provide equivalent conservation of covered species within the plan area and linkages between them and adjacent habitat areas outside of the plan area.

(C) Protecting and maintaining habitat areas that are large enough to support sustainable populations of covered species.

(D) Incorporating a range of environmental gradients (such as slope, elevation, aspect, and coastal or inland characteristics) and high habitat diversity to provide for shifting species distributions due to changed circumstances.

(E) Sustaining the effective movement and interchange of organisms between habitat areas in a manner that maintains the ecological integrity of the habitat areas within the plan area.

(5) The plan identifies activities, and any restrictions on those activities, allowed within reserve areas that are compatible with the conservation of species, habitats, natural communities, and their associated ecological functions.

(6) The plan contains specific conservation measures that meet the biological needs of covered species and that are based upon the best available scientific information regarding the status of covered species and the impacts of permitted activities on those species.

(7) The plan contains a monitoring program.

(8) The plan contains an adaptive management program.

(9) The plan includes the estimated timeframe and process by which the reserves or other conservation measures are to be implemented, including obligations of landowners and plan signatories and consequences of the failure to acquire lands in a timely manner.

(10) The plan contains provisions that ensure adequate funding to carry out the conservation actions identified in the plan.

(b) A natural community conservation plan approved pursuant to this section shall include an implementation agreement that contains all of the following:

(1) Provisions defining species coverage, including any conditions of coverage.



(2) Provisions for establishing the long-term protection of any habitat reserve or other measures that provide equivalent conservation of covered species.

(3) Specific terms and conditions, which, if violated, would result in the suspension or revocation of the permit, in whole or in part. The department shall include a provision requiring notification to the plan participant of a specified period of time to cure any default prior to suspension or revocation of the permit in whole or in part. These terms and conditions shall address, but are not limited to, provisions specifying the actions the department shall take under all of the following circumstances:

(A) If the plan participant fails to provide adequate funding.

(B) If the plan participant fails to maintain the rough proportionality between impacts on habitat or covered species and conservation measures.

(C) If the plan participant adopts, amends, or approves any plan or project without the concurrence of the wildlife agencies that is inconsistent with the objectives and requirements of the approved plan.

(D) If the level of take exceeds that authorized by the permit.

(4) Provisions specifying procedures for amendment of the plan and the implementation agreement.

(5) Provisions ensuring implementation of the monitoring program and adaptive management program.

(6) Provisions for oversight of plan implementation for purposes of assessing mitigation performance, funding, and habitat protection measures.

(7) Provisions for periodic reporting to the wildlife agencies and the public for purposes of information and evaluation of plan progress.

(8) Mechanisms to ensure adequate funding to carry out the conservation actions identified in the plan.

(9) Provisions to ensure that implementation of mitigation and conservation measures on a plan basis is roughly proportional in time and extent to the impact on habitat or covered species authorized under the plan. These provisions shall identify the conservation measures, including assembly of reserves where appropriate and implementation of monitoring and management activities, that will be maintained or carried out in rough proportion to the impact on habitat or covered species and the measurements that will be used to determine if this is occurring.

(c) If a plan participant does not maintain the proportionality between take and conservation measures specified in the implementation agreement and does not either cure the default within 45 days or enter into an agreement with the department within 45 days to expeditiously



cure the default, the department shall suspend or revoke the permit, in whole or in part.

(d) Any data and reports associated with the monitoring program required by this section shall be available for public review. The entity managing the plan shall also conduct public workshops on an annual basis to provide information and evaluate progress toward attaining the conservation objectives of the plan.

(e) To the extent provided pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code and any guidelines adopted pursuant thereto, if the impacts on one or more covered species and its habitat are analyzed and mitigated pursuant to a program environmental impact report for a plan adopted pursuant to this chapter, a plan participant that is a lead agency or a responsible agency under that division shall incorporate in the review of any subsequent project in the plan area the feasible mitigation measures and alternatives related to the biological impacts on covered species and their habitat developed in the program environmental impact report.

(f) The department may provide assurances for plan participants commensurate with long-term conservation assurances and associated implementation measures pursuant to the approved plan.

(1) When providing assurances pursuant to this subdivision, the department's determination of the level of assurances and the time limits specified in the implementation agreement for assurances may be based on localized conditions and shall consider all of the following:

(A) The level of knowledge of the status of the covered species and natural communities.

(B) The adequacy of analysis of the impact of take on covered species.

(C) The use of the best available science to make assessments about the impacts of take, the reliability of mitigation strategies, and the appropriateness of monitoring techniques.

(D) The appropriateness of the size and duration of the plan with respect to quality and amount of data.

(E) The sufficiency of mechanisms for long-term funding of all components of the plan and contingencies.

(F) The degree of coordination and accessibility of centralized data for analysis and evaluation of the effectiveness of the plan.

(G) The degree to which a thorough range of foreseeable circumstances are considered and provided for under the adaptive management program.

(H) The size and duration of the plan.

(2) If there are unforeseen circumstances, additional land, water, or financial compensation or additional restrictions on the use of land,



water, or other natural resources shall not be required without the consent of plan participants for a period of time specified in the implementation agreement, unless the department determines that the plan is not being implemented consistent with the substantive terms of the implementation agreement.

2821. Concurrent with the approval by the department of a final natural community conservation plan, the department shall do both of the following:

(a) Establish a list of species that are authorized for take pursuant to Section 2835 and the department shall make specific findings to support coverage pursuant to Section 2820. For purposes of determining whether a species should receive coverage under a plan, the department shall use, in addition to the standards required for the adoption of a plan, one or more of the following criteria:

(1) Coverage is warranted based upon regional or landscape level consideration, such as healthy population levels, widespread distribution throughout the plan area, and life history characteristics that respond to habitat-scale conservation and management actions.

(2) Coverage is warranted based on regional or landscape level considerations with site specific conservation and management requirements that are clearly identified in the plan for species that are generally well-distributed, but that have core habitats that must be conserved.

(3) Coverage is warranted based upon site specific considerations and the identification of specific conservation and management conditions for species within a narrowly defined habitat or limited geographic area within the plan area.

(b) Find that the mitigation measures specified in the plan and imposed by the plan participants are consistent with subdivision (d) of Section 2801.

2822. The department may seek injunctive relief against any plan participant, person, or entity to enforce this chapter.

2823. The department shall suspend or revoke any permit, in whole or in part, issued for the take of a species subject to Section 2835 if the continued take of the species would result in jeopardizing the continued existence of the species.

2825. The department may adopt regulations for the development and implementation of natural community conservation plans consistent with this chapter.

2826. Nothing in this chapter exempts a project proposed in a natural community conservation planning area from Division 13 (commencing with Section 21000) of the Public Resources Code or otherwise alters or affects the applicability of that division.



2827. To the extent practicable, implementation of natural community conservation plans shall use the services of either the California Conservation Corps or local community conservation corps.

2828. Nothing in this chapter prohibits a local government from exercising any power or authority granted to it pursuant to state law to acquire land or water to implement a plan.

2829. (a) The department may be compensated for the actual costs incurred in participating in the preparation and implementation of natural community conservation plans. These costs may include consultation with other parties to agreements authorized by Section 2810, providing and compiling wildlife and wildlife habitat data, reviewing and approving the final plan, monitoring implementation of the plan, and other activities necessary to the preparation and implementation of a plan.

(b) The department may be compensated for those expenses identified in subdivision (a) according to a schedule in the agreement authorized by Section 2810.

2830. Nothing in this chapter prohibits the taking or the incidental take of any identified species if the taking is authorized by the department pursuant to any of the following:

(a) A natural community conservation plan or amended plan approved by the department prior to January 1, 2002. Any permits, plans, implementation agreements, and amendments to those permits, plans, or implementation agreements described in this section are deemed to be in full force and effect as of the date approved or entered into by the parties insofar as they authorize the take of identified species pursuant to an approved natural community conservation plan and shall be governed solely by former Chapter 10 (commencing with Section 2800) as it read on December 31, 2001.

(b) Any natural community conservation plan, or subarea plan, approved, or amended on or after January 1, 2002, for which a planning or enrollment agreement meets any of the following criteria, which shall be solely governed in accordance with former Chapter 10 (commencing with Section 2800) as it read on December 31, 2001:

(1) The natural community conservation plan was entered into between the department and plan participants prior to January 1, 2001, and is carried out pursuant to Rule 4(d) for the California Gnatcatcher (Federal Register Volume 58, December 10, 1993), including the southern subregion of Orange County.

(2) The natural community conservation plan was prepared pursuant to the planning agreement for the San Diego Multiple Species Conservation Plan.



(3) The natural community conservation plan was prepared pursuant to the planning agreement for the San Diego Multiple Habitat Conservation Plan.

(c) Any programmatic natural community conservation plan approved by the department on or before January 1, 2002.

(d) Any natural community conservation plan developed pursuant to a planning or enrollment agreement executed on or before January 1, 2001, and for which the department finds that the plan has been developed using a public participation and scientific analysis process substantially in conformance with the intent of paragraph (5) of subdivision (b) of Section 2810 and Section 2815.

(e) Any natural community conservation plan developed pursuant to a planning agreement executed on or before January 1, 2002, and which the department finds is in substantial compliance with Section 2820.

2835. At the time of plan approval, the department may authorize by permit the taking of any covered species whose conservation and management is provided for in a natural community conservation plan approved by the department.

